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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**JASON DAVID BODIE,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,**

vs.

LYFT, INC.,

Defendant.

CASE NO: 3:16-cv-02558-L-NLS

CLASS ACTION

**SECOND AMENDED
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C. §
227 ET. SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. JASON DAVID BODIE (“Plaintiff”) brings this class action complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of LYFT, INC. (“Defendant” or “Lyft”) and its
5 related entities, subsidiaries and agents, in negligently, knowingly, and/or
6 willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, (“TCPA”), thereby
8 invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge
9 as to himself and his own acts and experiences, and, as to all other matters, upon
10 information and belief, including investigation conducted by his attorneys.

JURISDICTION AND VENUE

11
12 2. This Court has federal question jurisdiction because this case arises out of
13 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132
14 S. Ct. 740 (2012).
15 3. Venue is proper in the United States District Court for the Southern District of
16 California pursuant to 18 U.S.C. § 1391(b), because Plaintiff resides in this district
17 and Defendant conducts business in the County of San Diego.

PARTIES

18
19 4. Plaintiff is an individual citizen and resident of the State of California, County of
20 San Diego.
21 5. Plaintiff is informed and believes, and thereon alleges, that LYFT, INC. is, and at
22 all times mentioned herein was, a Delaware corporation whose principal place of
23 business is located in San Francisco, California.
24 6. Lyft is, and at all times mentioned herein was, a corporation and a “person,” as
25 defined by 47 U.S.C. § 153(39).
26 7. Upon information and belief, Lyft is a transportation networking company that
27 provides a mobile application to enable connecting passengers with drivers using
28

personal vehicles.

8. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California and in the County of San Diego.

FACTUAL ALLEGATIONS

9. On or about October 10, 2016 at approximately 2:25 pm PST, Plaintiff received two text messages, one immediately after the other, from telephone number 415-408-5865, which belongs to or was used by Lyft or an agent of Lyft, Inc.

10. The first of the two text messages sent to Plaintiff instructed him to download the Lyft App to his cellular phone, stating, “Download the Lyft app”.

11. The second unsolicited text message contained a link to download Lyft’s app in the Apple App Store, stating, “lyft.com”.

12. None of these text messages were addressed to Plaintiff by name.

13. Upon information and belief, the text messages were sent at the direction of Lyft, Inc. to Plaintiff and several hundreds of other individuals within a short period of time.

14. Upon information and belief, the text messages were sent via a commercial text messaging system by an agent or vendor hired by Lyft who was acting under the direction and control of Lyft for the financial benefit of Lyft.

15. Upon information and belief, Lyft instructed its agent or vendor as to the content of the text messages and timing of the sending of the text messages, in an effort to increase use of Lyft’s mobile application.

16. Upon information and belief, Lyft is vicariously liable for the telemarketing conduct of its agent and vendor alleged herein, specifically, Twilio Inc. (“Twilio”). Twilio is a cloud-based communications company that markets and sells their SMS Bulk text messaging campaign program and dialers to customers,

1 which allows said customers to advertise to unknown potential customers by
2 calling and texting millions of random individuals' cellular telephones.

3 17. Upon information and belief, the automated text messaging system used to send
4 the SMS text messages to Plaintiff was provided by Twilio, which utilizes a
5 sophisticated commercial dialing platform to send "real-time"
6 text message notifications, including marketing text messages, to consumers' cell
7 phones.

8 18. Based upon recent online research, "Lyft uses Twilio to send notifications" via
9 text messages. See <https://customers.twilio.com/249/lyft/>, accessed January 22,
10 2019.

11 19. According to Twilio's website, "Lyft cut support costs by 100%" by utilizing
12 Twilio. See <https://customers.twilio.com/249/lyft/>, accessed January 22, 2019.

13 20. According to Twilio's website, Twilio offers services that include the ability to
14 "[s]end and receive text messages globally," and to "programmatically send
15 messages to millions." See <https://www.twilio.com/sms>, accessed January 22,
16 2019.

17 21. According to Twilio's website, the Twilio dialing platform can "[s]end one or 1
18 billion messages," see <https://www.twilio.com/sms>, accessed January 22, 2019.

19 22. Upon information and belief, the SMS text messages were sent using equipment
20 that can produce and automatically send text messages *en masse* to thousands of
21 cellular telephone numbers stored as a list or database without the need for an
22 individual person to dial the numbers, instead the software program calls the
23 cellular telephone numbers of the recipients of the campaign on its own.

24 23. Upon information and belief, the Twilio platform has the capacity to automatically
25 dial and send text messages to cellular telephone numbers in random orders via
26 the Twilio, Inc. SMS Mass Texting platform's number generation program that
27 produces numbers to be dialed with random combinations of telephone numbers
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1 beginning with prefixes in the area of the assigned advertising campaign.

2 24.As stated on Twilio Inc.’s website, “With bulk notifications, a business can send
3 relevant, targeted messages to large groups with only one API (‘Application
4 Programming Interface’) request.” Customers of Twilio access the technology
5 platform via an application program interface (“API”) that permits them to
6 programmatically create messages that are subsequently and automatically
7 transmitted by Twilio. Twilio’s programmatic text messaging service provides
8 their mobile telemarketing customers with an “SMS API” which interfaces to
9 “cloud software” capable of automatically sending “billions of SMS messages” to
10 the cellular telephones of mobile subscribers via “more than 900 global carriers.”

11 25.Twilio’s SMS API is accessed by Twilio users through a “client program” that
12 incorporates the SMS API. A client program is a software program used by
13 Twilio’s customers incorporating the SMS API software to communicate with
14 Twilio’s platform technology. The SMS API incorporated into the client program
15 enables Twilio’s telemarketing customers to create message text content or
16 portions of content. Telemarketing customers can then upload and store that
17 content on Twilio’s hosted platform. This content is subsequently used by Twilio
18 to automatically and programmatically create, build, copy and initiate any number
19 of SMS messages to be sent to a list of cellular telephone numbers containing that
20 same content—the precise definition of an automated text message program.
21 Other basic functions enabled by the SMS API include the ability to upload the
22 list of cellular telephone numbers to be stored for the automated text messaging
23 program and an automatic means to determine when text messages using the
24 provided content are to be created, built, copied and sent automatically to the
25 stored list of cellular telephone numbers.

26 26.Here, upon information and belief, an employee of Lyft directed Twilio to send
27 the two text messages described in Paragraphs 9-12 above, by entering the content
28

1 and designating the cellular telephone number prefixes for which the Twilio Mass
2 SMS Campaign software would generate in random order and dial individually
3 without a human needing to in fact dial the number and intervene after the original
4 content and amount of random numbers were entered into Twilio's program.

5 27. Upon information and belief, which Plaintiff will prove via evidentiary support
6 after a reasonable opportunity for further investigation and discovery, Plaintiff
7 alleges that the Defendant Lyft hired Twilio's bulk SMS messaging platform to
8 send the two SMS messages sent in rapid succession to Plaintiff, which are
9 described in Paragraphs 9-12 above, with only one API, thus the SMS Bulk
10 software generated, dialed, and sent the SMS messages to Plaintiff without a
11 human doing so.

12 28. Twilio describes their SMS Bulk text messaging software used by Lyft as a:
13 "Super Network"—a software layer that interconnects with telecom networks
14 around the world—is already baked into the Twilio SMS API ("Application
15 Programming Interface.

16 29. Twilio allows users to programmatically send automated text messages and phone
17 calls, and is often used for "mobile marketing" through text messages and
18 telemarketing calls. In fact, Twilio provides clients with a tutorial on effective
19 mass, mobile marketing. Yet, tellingly, Twilio makes clear that the use of the
20 Twilio application has a precondition that users of the Twilio service verify that
21 the "user wants to opt into SMS and MMS notifications from your company."
22 This is due to the fact that Twilio is aware the use of their Mass Text Messaging
23 Bulk SMS program would violate the Telephone Consumer Protection Act (47
24 U.S.C. § 227) if sent to recipients' cellular telephones without their consent, as
25 they are aware their software falls within the statutory definition of an Automated
26 Telephone Dialing System.

27 30. Therefore, the SMS Bulk text messaging Twilio software used by Lyft was
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1 equipment that had the capacity to store or produce telephone numbers to be
2 called, using a random or sequential number generator and to dial such numbers,
3 thus the Twilio mass SMS software used by Lyft was an Automated Telephone
4 Dialing System as that term is defined under 47 U.S.C. § 227(a)(1).

5 31. The SMS text messages described in Paragraphs 9-12 sent to Plaintiff constituted
6 a “telephone solicitation” within the meaning of 47 U.S.C. § 227(a)(4) in that they
7 were initiated for the purpose of encouraging the purchase of a good or service.

8 32. Plaintiff did not provide prior express written consent allowing Defendant, or
9 anyone acting on behalf of Defendant, to send these SMS text messages to
10 Plaintiff’s cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

11 33. Plaintiff did not have an established business relationship with Defendant at the
12 time of these text messages.

13 34. Through Defendant’s aforementioned conduct, Plaintiff suffered an invasion of a
14 legally protected interest in privacy, which is specifically addressed and protected
15 by the TCPA.

16 35. Plaintiff was personally affected by Defendant’s aforementioned conduct because
17 Plaintiff was frustrated and distressed that, Defendant interrupted Plaintiff with an
18 unwanted solicitation text message using an ATDS.

19 36. Defendant’s text messages forced Plaintiff and other similarly situated class
20 members to live without the utility of their cellular phones by occupying their
21 cellular telephone with one or more unwanted calls, causing a nuisance and lost
22 time.

23 37. Defendant’s text messages to Plaintiff’s cellular telephone number was
24 unsolicited by Plaintiff and without Plaintiff’s permission.

25 38. Plaintiff is informed and believes and here upon alleges, that the text messages
26 were sent by Defendant and/or Defendant’s agent(s), with Defendant’s
27 permission, knowledge, control and for Defendant’s economic benefit.

28

39. These SMS text messages made by Defendant or its agents were sent in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of himself and all others similarly situated (the "Class").

41. Plaintiff represents, and is a member of, the Class, consisting of:

All persons within the United States who received any text messages from Defendant or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system within the four years prior to the filing of the Complaint.

42. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the several thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

43. Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and the Class members via their cellular telephones, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

44. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as

1 warranted as facts are learned in further investigation and discovery.

2 45. The joinder of the Class members is impractical and the disposition of their claims
3 in the Class action will provide substantial benefits both to the parties and to the
4 court.

5 46. There is a well-defined community of interest in the questions of law and fact
6 involved affecting the parties to be represented. The questions of law and fact to
7 the Class predominate over questions which may affect individual Class members,
8 including the following:

- 9 a. Whether, within the four years prior to the filing of the Complaint,
10 Defendant sent any text messages (other than a call made for emergency
11 purposes or made with the prior express written consent of the called
12 party) to Class members using any automatic telephone dialing system
13 to any telephone number assigned to a cellular telephone service;
- 14 b. Whether the text messages were sent for marketing or solicitation
15 purposes, such that they require prior express written consent;
- 16 c. Whether Plaintiff and the Class members were damaged thereby, and
17 the extent of damages for such violation; and
- 18 d. Whether Defendant should be enjoined from engaging in such conduct
19 in the future.

20 47. As a person that received a SMS text message using an automatic telephone
21 dialing system, without Plaintiff's prior express consent, Plaintiff is asserting
22 claims that are typical of the Class. Plaintiff will fairly and adequately represent
23 and protect the interests of the Class in that Plaintiff has no interests antagonistic
24 to any member of the Class.

25 48. Plaintiff and the members of the Class have all suffered irreparable harm as a
26 result of Defendant's unlawful and wrongful conduct. Absent a class action, the
27 Class will continue to face the potential for irreparable harm. In addition, these
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1 violations of law will be allowed to proceed without remedy and Defendant will
 2 likely continue such illegal conduct. Because of the size of the individual Class
 3 member's claims, few, if any, Class members could afford to seek legal redress
 4 for the wrongs complained of herein.

5 49. Plaintiff has retained counsel experienced in handling class action claims and
 6 claims involving violations of the Telephone Consumer Protection Act.

7 50. A class action is a superior method for the fair and efficient adjudication of this
 8 controversy. Class-wide damages are essential to induce Defendant to comply
 9 with the law. The interest of Class members in individually controlling the
 10 prosecution of separate claims against Defendant is small because the maximum
 11 statutory damages in an individual action for violation of privacy are minimal.
 12 Management of these claims is likely to present significantly fewer difficulties
 13 than those presented in many class claims.

14 51. Defendant has acted on grounds generally applicable to the Class, thereby making
 15 appropriate final injunctive relief and corresponding declaratory relief with
 16 respect to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER** 19 **PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

20 52. Plaintiff incorporates by reference all of the above paragraphs as though fully
 21 stated herein.

22 53. The foregoing acts and omissions of Defendant constitute numerous and multiple
 23 negligent violations of the TCPA, including but not limited to each and every one
 24 of the above-cited provisions of 47 U.S.C. § 227. *et seq.*

25 54. As a result of Defendant's negligent violations of 47 U.S.C. § 227, *et seq.*, Plaintiff
 26 and the Class are entitled to an award of \$500.00 in statutory damages, for each
 27 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 28

1 55.Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
2 such conduct in the future.

3
4 **SECOND CAUSE OF ACTION**

5 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**
6 **CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.**

7 56.Plaintiff incorporates by reference all of the above paragraphs as though fully
8 stated herein.

9 57.The foregoing acts and omissions of Defendant constitute numerous and multiple
10 knowing and/or willful violations of the TCPA, including but not limited to each
11 and every one of the above-cited provisions of 47 U.S.C. § 227, *et seq.*

12 58.As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227
13 *et seq.*, Plaintiff and each member of the Class are entitled to treble damages, as
14 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
15 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

16 59.Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
17 such conduct in the future.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the
20 Class members the following relief against Defendant:

21 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
22 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

23 As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
24 Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for
25 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- 26 • Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks for himself and the
27 Class injunctive relief prohibiting such conduct in the future;
28

- Costs of suit;
- Plaintiff be certified Class Representative and counsel for Plaintiff be certified Class Counsel;
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL
VIOLATION OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks for himself and the Class injunctive relief prohibiting such conduct in the future;
- Costs of suit;
- Plaintiff be certified Class Representative and counsel for Plaintiff be certified Class Counsel;
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

60. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 22, 2019

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
Abbas Kazerounian, Esq.
Attorneys for Plaintiff